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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

FERMIN BRITO PALACIOS,
Petitioner,
v.
GERALD JANDA, Warden,
Respondent.

Case No. CV 12-7667-DSF (MLG)
ORDER DENYING CERTIFICATE OF
APPEALABILITY

Rule 11 of the Rules Governing Section 2254 Cases in the United States District Courts requires the district court to issue or deny a certificate of appealability ("COA") when it enters a final order adverse to the petitioner.

Before a petitioner may appeal the Court's decision denying his petition, a COA must issue. 28 U.S.C. § 2253(c)(1)(A); Fed. R. App. P. 22(b). The Court must either issue a COA indicating which issues satisfy the required showing or provide reasons why such a certificate should not issue. 28 U.S.C. § 2253(c)(3); Fed. R. App. P. 22(b).

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1 The court determines whether to issue or deny a COA pursuant to
2 standards established in *Miller-El v. Cockrell*, 537 U.S. 322 (2003);
3 *Slack v. McDaniel*, 529 U.S. 473 (2000); and 28 U.S.C. § 2253(c). A
4 COA may be issued only where there has been a "substantial showing
5 of the denial of a constitutional right." 28 U.S.C. § 2253 (c)(2);
6 *Miller-El*, 537 U.S. at 330. As part of that analysis, the Court must
7 determine whether "reasonable jurists would find the district court's
8 assessment of the constitutional claims debatable or wrong." *Slack*,
9 529 U.S. at 484, *See also Miller-El*, 537 U.S. at 338.

10 In *Silva v. Woodford*, 279 F.3d 825, 832-33 (9th Cir. 2002), the
11 court noted that this amounts to a "modest standard". (Quoting
12 *Lambright v. Stewart*, 220 F.3d 1022, 1025 (9th Cir. 2000)). Indeed,
13 the standard for granting a COA has been characterized as
14 "relatively low". *Beardlee v. Brown*, 393 F.3d 899, 901 (9th Cir.
15 2004). A COA should issue when the claims presented are "adequate
16 to deserve encouragement to proceed further." *Slack*, 529 U.S. at
17 483-84, (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)); *see*
18 *also Silva*, 279 F.3d at 833. If reasonable jurists could "debate"
19 whether the petition could be resolved in a different manner, then
20 the COA should issue. *Miller-El*, 537 U.S. at 330.

21 Under this standard of review, a COA will be denied. In denying
22 the petition for writ of habeas corpus, the Court concluded, for the
23 reasons stated in the Magistrate Judge's Report and Recommendation,
24 that Petitioner was not entitled to habeas corpus relief on his
25 claims of constitutional error, because he had failed to show that
26 the state court decision was contrary to, or involved an unreasonable
27 application of, clearly established federal law or Supreme Court
28 precedent. *Harrington v. Richter*, --- U.S. ---, 131 S.Ct. 770, 783-84

(2011). Petitioner cannot make a colorable claim that jurists of reason would find debatable or wrong the decision denying the petition. Thus, Petitioner is not entitled to a COA.

3/22/13

Dated: _____

Dale S. Fischer

Dale S. Fischer
United States District Judge

Presented By:

Marc L. Goldman

Marc L. Goldman
United States Magistrate Judge